

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

Name GLEN DALE SUMMERS
Prison Number 216967
Place of Confinement W.F.D.C.F
Action No. 07-543-KD-C
(To be supplied by Clerk of U. S. District Court)

GLEN DALE SUMMERS (PETITIONER)
(Full name under which you were convicted)

v.

KENNETH K. JONES (WARDEN) (RESPONDENT)
(Name of Warden, Superintendent, Jailor, or authorized person having custody of petitioner)

PETITION FOR WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

Instructions - Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5, your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must complete the "Motion to Proceed Without Prepayment of Fees and Costs" form mailed to you with this form, and have an authorized officer at the jail or prison complete the attached financial statement. The completed forms must be returned to the federal court clerk in Mobile.

Even if the court authorizes you to proceed without prepayment of filing fees, you are obligated to pay the full \$5.00. If you have the ability to pay a partial filing fee when your complaint is filed, you will be

required to pay an amount, based on your assets, of up to the greater of 20% of your average monthly balance in your prison account, or your average monthly balance for six months immediately preceding the filing of your petition. Thereafter, your prison account will be garnished at the rate of 20% of your monthly income until the filing fee is paid.

(5) Only convictions entered by one court at the same time may be challenged in a single petition. If you seek to challenge convictions entered by different courts in the same state or in different states, you must file separate petitions as to each court.

(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.

(7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is 113 Saint Joseph Street, Mobile, Alabama 36602.

(8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

(9) You must immediately advise the Court of any change in your address, e.g., if you are released, transferred, moved, etc. Failure to notify the Court of your new address will result in the dismissal of this petition for failure to prosecute and to obey the Court's order.

PETITION

1. Name and location of court which entered the judgment of conviction under attack: Circuit Court of

BALDWIN County, Alabama; Case Number CC-00-631.60

Judge J. LANGFORD FLOYD. Other court, and case number, if not Circuit Court:

2. Date of judgment of conviction MARCH 22, 2001

3. Length of sentence MULTIPLE LIFE

4. Nature of offense involved (all counts) SODOMY; ATT RAPE; SEXUAL ABUSE; ATT SEXUAL TORTURE; CONTRIBUTING TO DELINQUENCY OF MINOR; DISTRIBUTING PORNOGRAPHIC MATERIAL TO A MINOR

5. What was your plea? (Check one)

- (a) Not guilty ☒ _____
(b) Guilty _____
(c) Nolo contendere _____

6. Kind of trial: (Check one)

- (a) Jury ☒ _____
(b) Judge only _____

7. Did you testify at the trial? Yes ☒ _____ No _____

8. Did you appeal from the judgment of conviction? Yes ☒ _____ No _____

9. If you did not appeal, explain briefly why you did not: _____

_____ N/A _____

10. If you did appeal, answer the following:

(a) Name of court ALABAMA COURT OF CRIMINAL APPEALS

(b) Result AFFIRMED

(c) Date of result JULY 21, 2001

(d) Did you file a petition for rehearing? Yes ☒ _____ No _____; if yes, what was the result?

OVERRULED

When did the court rule on your petition? _____ ☒

(e) Did you file a petition for certiorari? Yes ☒ _____ No _____; if yes, what was the result?

DENIED

When did the court rule on your petition? MAY 21 2003

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions (Rule 20, Rule 32, Error Coram Nobis, Habeas Corpus), applications, or motions with respect to this judgment in any state court?

Yes ✓ No _____

12. If your answer to 11. was "yes," give the following information:

(a)(1) Name of court BALDWIN COUNTY Date filed APRIL 26th 2004

(2) Nature of proceeding (Rule 32, Rule 20, etc.) RULE 32

(3) Grounds raised DOUBLE JEDPARDY; INEFFECTIVE ASSISTANCE
OF COUNSEL'S TRIAL AND APPELLATE; INDICTMENT
DEFECTIVE; JURY NOT SWORN

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ✓ No _____

(5) Result DENIED

(6) Date of result FEB 26th 2006

(b) As to any second petition, application or motion, give the same information:

(1) Name of court N/A Date filed _____

(2) Nature of proceeding N/A

(3) Grounds raised N/A

N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

(5) Result N/A

(6) Date of result N/A

(c) As to any third petition, application or motion, give the same information:

(1) Name of court N/A Date filed _____

(2) Nature of proceeding N/A

(3) Grounds raised N/A

N/A

N/A

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes _____ No _____

(5) Result N/A

(6) Date of result N/A

(d) Did you appeal the result of action taken on any petition, application or motion to the highest state court having jurisdiction?

(1) First petition, etc. Yes ☒ No _____

Date filed JULY 16, 2006 Result AFFIRMED

Date of result DEC 16, 2006

(2) Second petition, etc. Yes ☒ No _____

Date filed DEC 25, 2006 Result OVERRULED

Date of result MARCH 9, 2007

(3) Third petition, etc. Yes ☒ No _____

Date filed MARCH 21, 2007 Result DENIED

Date of result MAY 11, 2007

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

NA

13. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

Caution: In order to proceed in the federal court, you must first exhaust your state court remedies as to each ground on which you request action by the federal court. Also, if you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(I) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: THE COURT FAILURE TO SWEAR IN THE
JURY VENUE

1. Supporting FACTS (tell your story briefly without citing cases or law): THE VENUE
FROM WHICH HIS PETIT JURY WAS SELECTED
WAS NOT PROPERLY SWORN AND HIS TRIAL COUNSEL
WAS INEFFECTIVE FOR HIS FAILURE TO PROPERLY PRESERVE
THIS ERROR

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes ✓ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

B. Ground two: DOUBLE JEOPARDY VIOLATION

1. Supporting FACTS (tell your story briefly without citing cases or law): PETITIONER
COULD NOT BE CONVICTED OF SEXUAL ABUSE IN
THE FIRST DEGREE AND RAPE IN THE FIRST DEGREE.

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes ☒ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

N/A

C. Ground three THE INDICTMENT WAS FATALY DEFECTIVE
BECAUSE IT CHARGED FELONY AND MISDEMEANOR.

1. Supporting FACTS (tell your story briefly without citing cases or law): THE COURTS
HAVE INVARIABLY HELD THAT THE COUNTY COURT
CANNOT ABUSE JURISDICTION OR TRY A MISDEME-
-ANOR WHERE IT ORIGINATED IN THE COUNTY COURT
UNTIL AN INFORMATION HAS BEEN FILED.

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes ☒ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

N/A

D. Ground four: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
FOR FAILURE TO OBJECT OR PRESERVE FOR APPELLANT REVIEW
HIS FIFTH AMENDMENT RIGHT.

1. Supporting FACTS (tell your story briefly without citing cases or law): HIS CONVIC-
-TIONS VIOLATED THE PRINCIPAL OF DOUBLE JEOPARDY
THE SAME FACTUAL EVIDENCE IS RELIES UPON IN CLAIM
II OF THIS BRIEF

2. Did you raise this claim before the state courts on:

Direct appeal: Yes _____ No _____

Rule 20/32 Petition: Yes ☒ No _____

Error Coram Nobis: Yes _____ No _____

State Habeas Corpus: Yes _____ No _____

3. If you did not raise this claim before the state courts, tell why you did not: _____

_____ N/A

14. A. Have any of the grounds listed in this present habeas corpus petition ever been raised by you in
any other federal habeas corpus petition? Yes _____ No ☒.

If yes, which grounds? _____
_____ N/A

State the name and case number of your previous federal habeas corpus petition: _____
_____ N/A

B. Have you previously filed a habeas corpus petition attacking this present conviction in this or
any other federal court? Yes _____ No ☒. If yes, state the name and case number of your previous
federal habeas corpus petition: _____ N/A

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E. GROUND FIVE: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT OR PRESERVE THAT HIS INDICTMENT CONTAINED 4 COUNTS OF MISDEMEANOR CHARGES.

1. SUPPORTING FACTS (TELL YOUR STORY BRIEFLY WITHOUT CITING CASES OR LAW): THE INDICTMENT CHARGE FELONY AND MISDEMEANOR IN A MULTIPLE COUNTS INDICTMENT.

2. DID YOU RAISE THIS CLAIM BEFORE THE STATE COURTS OR: DIRECT APPEAL: YES ___ NO ___

RULE 26/32 PETITION: YES ☒ NO ___

3. IF YOU DID NOT RAISE THIS CLAIM BEFORE THE STATE COURTS, TELL WHY YOU DID NOT: _____

N/A

F. GROUND SIX: THE STATE FAILURE TO OFFERED ANY EVIDENCE TO DISPUTE ANY CLAIM.

1. SUPPORTING FACTS (TELL YOUR STORY BRIEFLY WITHOUT CITING CASES OR LAW): THE STATE HAS FAILURE TO DISPUTE ANY CLAIMS AS REQUIRED BY LAW. THESE FACTS PRESENTLY STAND UNCHALLENGED.

2. DID YOU RAISE THIS CLAIM BEFORE THE COURT OR: DIRECT APPEAL: YES ___ NO ___

RULE 26/32 PETITION: YES ☒ NO ___

3. IF YOU DID NOT RAISE THIS CLAIM BEFORE THE STATE COURTS, TELL WHY YOU DID NOT: _____

N/A

G. GROUND SEVEN: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILURE TO OBJECT OR PRESERVE THAT THE STATE FAILURE TO PROVE THAT THE JURY WERE SWORN IN.

1. SUPPORTING FACTS (TELL YOUR STORY BRIEFLY WITHOUT CITING CASES OR LAW): THE RECORD WERE SILENT ON THE ISSUE OF SWEARING IN THE VERDICT. THE COURT ACKNOWLEDGE

-LEDGES ON THE RECORD THAT THE BURDEN HAD SHIFTED ON THE STATE TO PROVE THAT THE JURY WAS SWORN IN LC-6 OF THE HEARING.

2. DID YOU RAISE THIS CLAIM BEFORE THE STATE COURTS ON DIRECT APPEAL? YES NO

RULE 26/32. PETITION? YES ☒ NO ☐

3. IF YOU DID NOT RAISE THIS CLAIM BEFORE THE STATE COURTS TELL WHY YOU DID NOT: NA

THESE ISSUE WERE RAISE ON DIRECT APPEAL

ISSUE ONE: THE COURT OF CRIMINAL APPEALS ERRED IN UPHOLDING THE TRIAL COURT'S DENIAL OF PETITIONER CHALLENGE FOR CAUSE FOR A PROSPECTIVE JUROR.

ISSUE TWO: THE COURT OF CRIMINAL APPEALS ERRED IN UPHOLDING THE TRIAL COURT'S DENIAL OF THE PETITIONER MOTION TO SUPPRESS.

ISSUE THREE: THE COURT OF CRIMINAL APPEALS ERRED IN UPHOLDING THE TRIAL COURT'S ADMISSION OF CERTAIN EVIDENCE WITHOUT A SUFFICIENT CHAIN OF CUSTODY.

ISSUE FOUR: THE COURT OF CRIMINAL APPEALS ERRED IN UPHOLDING THE TRIAL COURT'S ALLOWING TELEVISION CAMERAS IN THE COURTROOM.

N/A

15. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No ☒. If yes, name the court: _____

and state the name and case number of the petition or appeal: _____

16. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing THOMAS B. WARTON JR.
P.O. Box 6262 GULF SHORES AL 36547

(b) At arraignment and plea 'SAME'

(c) At trial 'SAME'

(d) At sentencing 'SAME'

(e) On appeal J. RUSSELL DIGOTT

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

17. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No _____

18. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) And give date and length of sentence to be served in the future: _____

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes _____ No ☒

19. **TIMELINESS OF PETITION:** This petition is subject to a one-year statute of limitations contained in The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244(d):

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If your judgment of conviction became final over one year ago, you must explain, in the space provided below, why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Typed or printed name of attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.
Executed and delivered to custodial authorities for mailing on _____

July 25, 2007

(date)

Glen Summers
Signature of Petitioner

Glen Summers
Current mailing address
100 Warrior Lane

Bessemer AL 35023

Glen Summers
216967 - 0-20 B
100 Warrior Ln.
Bessemer AL
35023



Clerk of the United States
District Court
113 Saint Joseph Street
MOBILE Alabama 36602

LEGAL MAIL